SB Civil Misc. Appeal No.37/2000
SB Civil Misc. Appeal No.38/2000
SB Civil Misc. Appeal No.39/2000
SB Civil Misc. Appeal No.06/2000
SB Civil Misc. Appeal No.24/2000
SB Civil Misc. Appeal No.62/2000
SB Civil Misc. Appeal No.90/2000

Date of Order: **24th April, 2006**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Rajesh Panwar for the appellant/s.
Mr.Jagdish Vyas for the respondent/s.

All these appeals arise out of the same accident, claim petitions of which were disposed off by the Motor Accident Claims Tribunal , Bikaner by a common judgment. Therefore, these appeals are being decided by a common order.

In all these appeals, six of them relate to the death of female of the family.

Learned counsel for the appellants submitted that the learned Tribunal had considered the income of the deceased as

Rs.700/-, which according to the learned counsel is on the lower side. A lady or a female in the house is the axis of the family around which the family moves and ignoring herself is negating the very existence of a female member of the family. Fixation of Rs.700/- as compensation is against the ground reality. The learned counsel for the appellants has placed reliance on a case decided by this Court in the matter of Major M.V. Thapliyal & Ors. vs. Smt. Shyam Bala & Ors. (ACTC 2001 554) wherein this Court had considered the case of female and had concluded that even in case of woman , services rendered could at least be assessed at minimum of Rs.1000/-.

The learned counsel for the Insurance Company was not in a position to say that such assessment would not be commensurate with the law as is in vogue.

Considering the above in the reasonings, this Court feels persuaded that instead of Rs.700/- the claim in case of ladies should be enhanced to Rs.1,000/-. Treating the income to be Rs.1,000/-, the claim is required to be revised in the case of death of Smt.Pushpa Devi in SBC Misc. Appeal No. 39/2000 Narsingh Das Joshi & Anr. vs. Kripal Singh & Ors., Savitri Devi in SBC Misc. Appeal No.37/2000 Kamal Kishore & Ors. vs. Kripal Singh & Ors., Shyama

Devi in SBC Misc. Appeal No.24/2000 Ramesh Kumar Harsh & Anr. vs. Kripal Singh & Ors., Suraj Devi in SBC Misc. Appeal No.06/2000 Arvind Kumar Acharya & Anr. vs. Kripal Singh & Ors., Shanti Devi in SBC Misc. Appeal No.62/2000 Babulal Kalla & Ors. vs. Kripal Singh & Ors. and Mukta Devi in SBC Misc. Appeal No.90/2000 Shyam Sunder & Anr. vs. Kripal Singh & Ors. In all these cases rest of the award is not interfered. The Tribunal is directed to issue a fresh award in terms of the above indicated enhanced claim. Rest of the appeal where non-earning member namely, Bhanwar Lal, in SBC Misc. Appeal No.38/2000 Nar Singh Das Joshi vs. Kripal Singh & Ors., has died the award is not interfered with, as the same is passed after considering the facts which could be the legitimate due to the claimant.

The appeals are disposed off with the aforesaid modifications.

(BHAGWATI PRASAD), J.

L.George

SB Civil Rev. Petition No.902/2001
SB Civil Rev. Petition No.941/2001

Date of Order: **03rd May, 2006**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Rajendra Mehta for the petitioner/s.
Mr.Sangeet Lodha for the respondent/s.

Heard learned counsel for the parties.

The tax board has considered the question in the light that there was no export of the commodity which was sold by the assessee because it was an inter-state sale. There was no order with the assessee to export them and, therefore, the argument of the assessee is not accepted that the bags were used in export, therefore, no tax is leviable.

On another ground the tax board has gone against the assessee wherein it has held that the bags were sold by the assessee after getting it stitched. There was an order of the purchaser for which payment was received by the assessee. In the order there was a condition that the purchaser will pay extra for the stitching. The tax

board has come to the conclusion that it was the bags and not the yarn which was sold by assessee. The third question was whether the white tape sold by the assessee is yarn or not ? The tax board has come to the conclusion that this tape is used for stitching the bags and used in many other jobs and this does not come within the definition of yarn. What was the nature of the yarn has been sought to be interpreted with the help of a book by Chhadha. This is a question of nature of commodity. The appellate authority has relied on a Tax Book written by Mr.Chhadha. It cannot be treated to be a fool proof method. Because it is a physically verifiable fact. Inferences made on the basis of physical verification cannot be disturbed in revision. Therefore, the conclusion is not likely to be interfered.

All the questions sought to be raised are the questions of fact and therefore cannot be considered to be questions of law. Hence, no interference can be made in revision.

There is no force in the revision petitions. Both the revision petitions are dismissed.

(BHAGWATI PRASAD), J.

L.George

Himmat Mal Gandhi vs. Madan Lal & Ors.

SB Criminal Rev. Petition No.01/1993

Date of Order: **05th May, 2006**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD

Mr.Manish Shishodia for the petitioner/s
Mr.P.N.Mohnani] for the respondent/s.
Mr.Niranjan Gaur]
Mr.O.P.Boob, P.P.

The present revision petition is filed by one of the first informant against the order of acquittal as passed by the court of Additional Sessions Judge No.2., Jodhpur in Sessions Case No.2/1982. According to the complainant the filing of revision petition was necessitated in the circumstances that the State Government has failed to file any appeal against the judgment of acquittal.

According to the prosecution case the petitioner was holding the post of Inspector,(Income Tax). On 07.09.81 he lodged a first information report at Police Station Shastri Nagar. According to

this report the first informant , along with one Shri G.C.Singhvi were to conduct a survey. This survey was authorised by the Assistant Director of Inspection (Intelligence), Jodhpur. For conducting the survey they proceeded to the business premises of Shri Om Prakash Chopra & Company. They reached the business premises at about 03.00 PM . When they entered , the owner of the shop was not there. But at 04.15 PM Madan Lal came and then they entered the premises . They expressed their intention to conduct the survey. They showed their authorisation letter but Madanlal refused to cooperate and said that his uncle alone would sign the papers. They started the survey proceedings and they entered into the godown where they found a small white bag lying on the grain bags. The bag was taken out and in this bag it was found that there were two diaries and slips folded by a rubber band. They showed such transactions which were other than the transactions entered into the regular books. They took these diaries in their possession . While they were awaiting their higher authorities another Inspector Man Singh Mehta also arrived. Then came Shri Ram Chandra Rathi, and Shri Ram Lal Rathi of Rathi Gum Factory and they wanted to hush up the matter. Even an offer of illegal gratification was made which was refused by the Inspectors. Shri Champalal Salecha also came there and he wanted to hush up the matter with the complainant.

Thereafter, the accused Harak Chand and Mohan Lal threatened the complainants. Sukh Ram Mutha came and he also wanted to hush up the matter. A good number of people collected there and in this process Nemi Chand and Bhuria , s/o Kishan Patwa and some other members surrounded the inspector and held him and one of them threw a fist full of red chillies in his eyes and took away the brief case in which the diaries and slips were placed. The matter was referred to the higher authorities who were being awaited. The inspectors were also given beating . Specific blows were attributed to Mohan Lal and Harak Chand. The bag was taken away from them. The prosecution was lodged. On the basis of the first information report, charge sheet was filed. At the trial prosecution examined 16 witnesses and tendered documents in evidence. Charges were framed under section 395,332,353 and 120B IPC.

The trial court, after considering the case of the prosecution, came to the conclusion that Ex.P/1 the document authorising the complainant and Mr.Singhvi for survey was not a genuine document because the Assistant Director of Inspection was not authorised to sanction any such survey. Further it was observed that the name of Mr.Gandhi was inserted unauthorisidely without the consent of Mr.Nand Lal the signatory, Assistant Director of

Inspection PW/8. Under section 133A of Income Tax Act 1961 (hereinafter referred to as 'the Act of 1961'), while a survey is being conducted, no document can be seized and, therefore, the trial court was of the opinion that offences under sections 352 and 353 IPC are not made out.

Learned counsel appearing for the complainant asserted that the aforesaid findings of the trial court were based on the misreading of the provisions of law and are not proper conceptualisation of the statutory provisions. The learned counsel for the petitioner referred to Section 2(21) , Section 116, Section 117 and Section 133A of the Act of 1961. They are being quoted here for ready reference.-

> **" 2. Definitions.**
>
> In this Act, unless the context otherwise requires,-
>
> (1) .....
> (2) .....
> (3) .....
> (4) .....
> (5) .....
>
> (21) "Director of Inspection" means a person appointed to be a Director of Inspection under sub-section (1) of section 117 , and includes a person appointed to be an Additional Director of Inspection, a Deputy Director of

Inspection or an Assistant Director of Inspection;

116. **Income -tax authorities.**

There shall be the following classes of Income -tax authorities for the purposes of this Act, namely:-

(a) The Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963),

(b) Directors of Inspection,

(c) Commissioners of Income-tax [Commissioners of Income-tax (Appeals) and Additional Commissioners of Income-tax,

(d) Assistant Commissioners of Income-tax, who may be either Appellate Assistant Commissioners of Income-tax or Inspecting Assistant Commissioners of Income-tax,

(e) Income-tax Officers , and

(f) Inspectors of Income-tax.

117. Appointment of Income-tax authorities.

(1) The Central Government may appoint as many Directors of Inspection, Commissioners of Icome-tax, [Commissioners of Income-tax (Appeals)] Additional Commissioners of Income-tax, Appellate or Inspecting Assistant Commissioners of Income-tax and Income-tax Officers of Class I Service, as it thinks fit.

(2) Commissioner may, subject to the rules and orders of the Central Government regulating the conditions of service of persons i public services and posts, appoint as many Income-tax Officers of Class II Service and as many Inspectors of Income-tax as may be sanctioned by the Central Government.

(3) Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, an Income-tax authority may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.

133A. Power of survey.

(1) Notwithstanding anything contained in any other provisions of this Act, an Income-tax authority may enter-

(a) any place within the limits of the area assigned to him, or

(b) any place occupied by any person in respect of whom he exercises jurisdiction,

at which a business or profession is carried on, whether such place be the principal place or not of such business or profession, and require any proprietor , employee or any other person who may at that time and place be attending in any manner to , or helping in , the carrying on of

such business or profession-

(i) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place,

(ii) to afford him the necessary facility to check or verify the cash stock or other valuable article or thing which may be found therein and

(iii) to furnish such information as he may require as to any matter which maybe useful for, or relevant to, any proceeding under this Act.

Explanation,- For the purposes of this sub-section, a place where a business or profession is carried on shall also include any other place, whether any business or profession is carried on therein or not, in which the person carrying on the business or profession states that any of his books of account or other documents or any part of his cash or stock or other valuable article or thing relating to his business or profession are or is kept.

2) .....

(3) .....

(4) .....

(5) .....

(6) .....

Explanation,- In this section,-

(a) "Income-tax authority" means an Inspecting Assistant Commissioner, an Assistant Director of Inspection or an Income-tax Officer and for the purposes of clause (i) of sub-section (1), clause (i) of sub-section (3) and sub-section (5), includes an Inspector of Income-tax if so authorised by the Income-tax Officer.

(b) ....."

Learned counsel for the complainant referred that in view of the provisions contained in Section 133A explanation, an Income Tax Authority in its explanatory providence in the section, includes Assistant Director of Inspection within the ambit of Income Tax Authority. Such provisions of Section 133 A of the Act of 1961 were incorporated in the Income Tax Act in the year 1975 and on relevant date they were in force. According to the power of survey contained in Section 133 A of the act of 1961 an Income- tax Authority may enter any place of business for the purposes of survey. Since Section

133A of the Act of 1961 authorises the authority and the explanation says the Assistant Director to be an Income- tax Authority which also includes Inspector of Income tax.

The conclusion drawn by the learned trial court that Ex.P/1 was an unauthorised document is devoid the force of law. Further, definition of Director of Inspection as contained in Section 2 (21) which says that Director of Inspection includes an Assistant Director of Inspection. Therefore, the authorisation by Assistant Director of Inspection was by no stretch of imagination an unauthorised act. Therefore, the conclusion of the trial court on this premises are misreading of law.

Once the findings of the trial court on the issue that Assistant Director of Inspection was not authorised to sign the authority letter for survey is found to be wrong , the very premise of the judgment goes and in this background the judgment is perverse.

The learned counsel appearing for the petitioner further submitted that the form was not filled up by the person authorising the survey. It was filled up by Mr.Gandhi and the names were added at his will. In this regard the statement of Assistant Director of

Inspection , PW/8 Nand Lal has been quoted out of place by the learned trial court. This was the case of the prosecution that Mr.Singhvi and Mr.Gandhi used to go together for the surveys and Mr. Nandal PW/8 has stated in his statement that he has signed the authorisation letter after reading it and after incorporation of the names of the Inspectors. Thus, the statement of Mr.Gandhi has been mis-quoted by the trial court , the judgment is vitiated.

The learned trial court also observed that under Section 133A of the Act f 1961 no seizure is provided. The authorities were only to make a survey , they could not have seized the documents . The trial court had gone wrong in assuming that there was any seizure. The documents at the relevant time were placed by the complainant in their bag. It was because they wanted these facts to be brought to the notice of the officers. The business man was not cooperating . He was not prepared to sign the documents. He was showing a hostile animus . His intention in throwing chillies was later on demonstrated. Temporarily the documents were in the possession of the income tax authorities which was required to be processed by putting identification marks etc. as provided under Section 133 A of the Act of 1961and that being the position a wrong presumption has been drawn by the trial court by assuming that there

was any seizure by the income tax authorities which was unauthorised. On the basis of such findings the trail court has come to the conclusion that offences under section 352 and 353 IPC are not made out which is manifestly wrong. Regarding other offences, the trial court has taken a view that those allegations are unsustainable and, therefore, acquittal has been recorded.

The learned counsel for the accused persons submit that no case for interference in revision is made out. State has not filed any appeal in the matter. In absence of appeal it is not possible to re-appreciate the evidence or go into the case as such.

The powers of revision in cases of acquittal are limited. The revisional court in no case record a conviction. Only a retrial can be ordered. No case for retrial is made out and in this background it has been prayed that the revision petition be dismissed. Reliance has been placed by the learned counsel for the accused to a Supreme Court decision in the matter of Bindeshwari Prasad Singh vs. State of Bihar (2002 Crl.L.J.3788) wherein the Hon'ble Supreme Court has observed as under :

"In the absence of any legal infirmity

> either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction at the instance of the informant. It may be that the High Court on appreciation of the evidence on record may reach a conclusion different from that of the trial court. But that by itself is no justification for exercise of revisional jurisdiction under Section 401 against a judgment of acquittal. The judgment of the trial court in the instant case was not perverse. No defect of procedure has been pointed out. There was also no improper acceptance or rejection of evidence nor was there any defect of procedure or illegality in the conduct of the trial vitiating the trial itself. "

I have heard learned counsel for the parties and have considered the record of the case. The foremost point in this revision petition is that it has been filed against an order of acquittal. Law is well settled that in revision a finding of acquittal cannot be converted into one of conviction. The only permissible way is to order a retrial. Whether a case for retrial is made out or not will have to be seen in the case.

The learned trial court has held that Ex.P/1, authorisation letter, has been issued by an unauthorised officer. The finding of the learned trial court in this regard is that ADI , i.e. Assistant Director of Inspection , was not a person competent to sign a document like

Ex.P/1 for which a reading of the provisions of the Act of 1961 is necessary. In the definition clause Section 2 (21) Director of Inspection includes an Assistant Director of Inspection. Thus whatever could be done by a Director of Inspection could also be done by Assistant Director of Inspection.

Section 116 of the Act of 1961 defines the Income-tax authorities . In clause (d) of this Section Assistant Commissioners of Income tax and Inspecting Assistant Commissioners of Income Tax have been included within the definition of Income tax authorities . Directors of Inspection have been included in the definition of Income- tax authorities. Directors of Inspection have been defined in Section 2 (21) of the Act of 1961 which include Assistant Director of Inspection would mean that Assistant Director of Inspection is included in the definition of Income- tax authorities.

In clause (f) Inspectors of Income-tax has been included. Thus it will be seen that the Assistant Director of Inspection and an Inspector of Income-tax is an authority under the Income Tax Act.

Once it is concluded that Assistant Director of Inspection is an Income tax authority then under Section 133 A of

the Act of 1961 powers of survey are given which provides that an Income- tax authority may enter any place for the purposes of survey. Explanation appended to after subsection (6) of Section 133A of the Act of 1961 defines Income tax Authority and in this it has been provided that an Assistant Director of Inspection is an Income- tax authority.

Thus , for all practical purposes and intent under Section 133A of the Act of 1961, an Assistant Director of Inspection is an Income Tax Authority and an Asststant Director of Inspection could authorise the inspection. Even without the authorisation an Income tax authority has the power under Section 133 A of the Act of 1961 to enter any place and an Income Tax Inspector under sub-section (f) of Section 116 of the Income Tax Act includes Inspectors of Income Tax and, therefore, Inspectors of Income tax being income tax authority, had the right to make survey under Section 133 A of the Act of 1961.

The aforesaid discussion of law clearly establish that the learned trial court was not right in holding that Assistant Director of Inspection was not competent to sanction a survey. It is further important to note that the trial court has misquoted the statement of

PW/8 Assistant Director of Inspection Shri Nand Lal Kabra has clearly stated that he has signed Ex.P/1 after it was filled in. Filling in was done by Mr.Gandhi that is undisputed but then if such filling in is signed by the Assistant Director of Inspection , PW/8, Nand Lal Kabra then it cannot be said to be an unauthorised filling in because such filling in was accepted and such acceptance resulted into authorisitation as signed by PW/8 Assistant Director of Inspection, and, therefore, finding of the learned trial court that Ex.P/1 was an unauthorised authorisation, because the survey was unauthorised, is not a proper inference of the law.

In view of the aforesaid discussions, the judgment of the learned trial court proceeds on misconception of law and even according to law relied on by the learned counsel for the respondent an improper acceptance or rejection of evidence can be a ground for retrial. Here the judgment proceeds on a misreading of law . This is not a proper exercise of jurisdiction and deserves to be set aside.

Once the judgment is set aside the matter is required to be sent back to the trial court for retrial and for that purpose the trail court is to conduct retrial and for that purpose the Income tax Authorities may be called to explain powers which were required to

make Ex.P/1 an authoritative authorisation and, thereafter, decide the matter in accordance with law.

(**BHAGWATI PRASAD), J.**

L.George